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EXAMINER

PATEL, HARESH N

ART UNIT PAPER NUMBER

2126

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,362

Applicant(s)

YAMAGUCHI, TOSHIO

Examiner

Haresh Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 1-5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: ____

DETAILED ACTION

1. Claims 1-5 are presented for examination.

Priority

2. Applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d) or (f), is acknowledged.

Specification

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.

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- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities:

- i. The CROSS-REFERENCE TO RELATED APPLICATIONS section is missing claimed foreign priority information and co-pending applications.
- ii. All the prior art contents from the DETAILED DESCRIPTION OF THE INVENTION section needs to be moved into the "Description of Related Art" sub-section of the CROSS-REFERENCE TO RELATED APPLICATIONS section.
- iii. The sub-section "Field of the Invention" of the BACKGROUND OF THE INVENTION section is missing.
- iv. The "Summary of Information" section is too vague and needs to contain new subject matter.
- v. Field of the Invention section of the BACKGROUND OF THE INVENTION does not contain sufficient information and is not properly understood.
- vi. The DETAILED DESCRIPTION OF THE INVENTION section and all the related sections needs to replace terms, for example, "old one", "newest one", "newest server", etc.

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The disclosure is confusing, vague and indefinite. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

Appropriate correction is required.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "An improved system and method to dynamically select and locate server based on server's version information".

Drawings

5. Figures 2, 3 and 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. New corrected drawings are required in this application because Figure 1 does not convey show information to enable any person skilled in the art, for example, terms "Start", "Stop", "Change information", "Management object". Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the

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Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Information Disclosure Statement

7. An initialed and dated copy of Applicant's IDS form 1449, Paper No. 6, is attached to the instant Office action.

8. The supplied IDS are not sufficient for the claimed subject matter. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

In response to this requirement, please provide the title, citation and copy of each publication that is a source used for the description of the prior art in the disclosure. For each publication, please provide a concise explanation of that publication's contribution to the description of the prior art.

This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

Claim Objections

9. Claims 1-5 are objected to because of the following informalities:

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Claims 1, 4 and 5 contains term “server object information acquisition unit”, which is confusing. Applicant needs clarify whether it belongs to the client computer or the server computer.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1, 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1, 4 and 5 recite the term “said access”. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The term "newest one" in claims 1, 4 and 5 is a relative term, which renders the claim indefinite.

The term "change information" in claims 2 is a relative term, which renders the claim indefinite.

The term "old change information" in claims 3 is a relative term, which renders the claim indefinite.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by D'Souza 6,453,468 (Hereinafter D'Souza).

14. As per claims 1, 4 and 5, D'Souza teaches the following:

a distributed object management method for managing objects in a distributed object environment, comprising the steps of (e.g., A method for enhancing reliability while upgrading a software program implemented in a clustered computer system from a first version to a second version, abstract),

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a distributed object management system for managing objects in a distributed object environment, comprising,

a computer readable recording medium having recorded thereon a program for causing a computer to function as a distributed object management system for managing objects in a distributed object environment, comprising:

a server object information acquisition unit for requesting sever object information of server objects to be accessed (e.g., Beginning with the user's access request 110 (by, for example, typing in the URL at the user's web browser), the request is forwarded to a webserver router 112, which arbitrates among the webserver 114(a)-114(e), to decide which of these webserver should service this user's request, col. 2, lines 32 – 46),;

a server object information select unit for selecting and supplying a requester with server object information of a newest one of requested server objects (e.g., The method also includes assigning the subset of software modules with a first certification level. There is further included monitoring performance of the subset of software modules to ascertain whether the subset of software modules meet a predefined reliability criteria after the replacing, col. 7, lines 1 – 20),

a server object access unit for accessing a server object indicated in said server object information supplied; (e.g., FIG. 2 illustrates, in accordance with one aspect of the present invention, a clustered computer system architecture wherein an intelligent director agent (IDA) is included with each of the clusters that implement the webserver stage, the business logic stage, and the data repository stage, col. 7, lines 52 – 56) and

a request processing unit for performing processing requested by said access (e.g., FIG. 2 illustrates, in accordance with one aspect of the present invention, a clustered computer system

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architecture wherein an intelligent director agent (IDA) is included with each of the clusters that implement the webserver stage, the business logic stage, and the data repository stage, col. 7, lines 52 – 56).

15. As per claim 2, D'Souza teaches the following:

in a case where the requester is a server object, selecting and supplying the requester with the server object information of the server object to be accessed, in accordance with change information of the requester server object (e.g., If a certification level of a given software module of the plurality of software modules has a second certification level, the method includes allowing the load level on the second routing transaction requests to reach a second load level higher than the first load level, abstract).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Souza in view of Eskesen et. al. 5,897,658 (Hereafter Eskesen).

D'Souza does not specifically show the limitations of claim 3.

Eskesen teaches the following:

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in a case where there are a plurality of server objects having a same server object name or same interface identification information, stopping server objects having old change information (e.g., This use of service data handles 115a-115n and data descriptors 140a-140n allow a service 130a-130n to be stopped and restarted without loss of information or apparent interruption of operation in much the same way as the hidden server 70 can be stopped, replaced, and restarted. As with the hidden server 70, it is desirable that the data descriptors 140a-140n as produced by the old versions of services 130a-130n be understood by the new version of the services 130a-130n, col. 4, lines 40 – 48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of D'Souza with the teachings of Eskesen in order to facilitate selection of the server with higher version information from the available multiple servers.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See Form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (703) 605-5234. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached at (703) 305-8498.

The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 306-5404.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Haresh Patel

October 16, 2003.



JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100